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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/502,701	02/11/2000	Philip F. Fox	F351.12-0001	5544

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/502,701

Applicant(s)
FOX

Examiner
KURT ROWAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 25, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on May 6, 2002 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 U.S.C. § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 1-2, 7-9, 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Thibodeaux for substantially the same reasons stated in the first Office Action.

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The patent to Thibodeaux shows an ice fishing storage apparatus having a pair of extendable elongate shells 12, 13, 14 having an interior surface that defines an elongate cavity. The shells are located adjacent to each other. The top portion 5 of the container acts as a spacing structure and secures the extendable elongate shells in a predetermined relation to each other.

7. Claims 10-15, 17-18, 30-34, 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolniak for substantially the same reasons stated in the first Office Action.

The patent to Wolniak shows an ice fishing and fishing storage device. In reference to claims 10, 30-34, Wolniak shows a pair of elongate shells 30, 30a, each having an interior surface that defines an elongate cavity that ice fishing tackle is capable of being positioned within.

Wolniak shows a first spacing component or template 26 having a plurality of interior surfaces that define a plurality of apertures 22 and a second spacing component 21 in Fig. 2. In reference to claim 11, Wolniak shows the ice fishing tackle storage apparatus positioned in a container 10 that has an end wall 12 with an interior surface. The first spacing component is in contact with the interior surface of the wall as shown in Fig. 1. In reference to claim 12, Wolniak shows the second spacing component 21 in contact with the interior surface of the wall 11. Wolniak shows apertures or holes 23 in the bottom wall of the container which also can be considered as sockets which are joined to the elongate shells.

8. Claims 19, 21, 22-23, 39, 41 are rejected under 35 U.S.C. 102(b) as being anticipated by McEwen.

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The patent to McEwen shows an ice fishing tackle storage apparatus having a plurality of elongate shells 16 having an elongate interior cavity, a spacing structure 20, 20 secured to the shells and a plurality of legs 40, 42 attached to the shells. McEwen shows a container 10. McEwen shows the elongate shells capable of securing ice fishing tackle therein. The spacing structure 20, 20 is effective to maintain two or more of the elongate shells in predetermined relation with each other proximate the spacing structure. The elongate shells are capable of serving as legs that will stably support the apparatus on a surface when the two elongate shells are positioned in contact with the surface as shown in Fig. 8.

Claim Rejections - 35 U.S.C. § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thibodeaux as applied to claim 1, above, and further in view of Morin.

The patent to Thibodeaux shows an ice fishing tackle storage device as discussed above and show one template which is the top surface. Morin shows an ice fishing tackle storage apparatus having a first 14 and second 24 template to hold rod 12. In reference to claim 3, it would have been

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obvious to employ a second template in Thibodeaux as shown by Morin for the purpose of supporting the fishing rod in two places.

11. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thibodeaux.

The patent to Thibodeaux shows a fishing storage apparatus as discussed above. Thibodeaux shows holding fishing rods, but it would have been obvious to hold other related fishing tackle such as tip-ups for ice fishing both pre-rigged or un-rigged since the function is the same. In reference to claim 28, Thibodeaux shows a stop 13-14. It would have been obvious to employ an adjustable stop. See *In re Stevens*, 101 USPQ 284. In reference to claim 29, Thibodeaux does not show a rounded surface at the proximal end of the elongate shell. However, it would have been obvious to employ a rounded surface for the purpose of easier insertion of the fishing tackle. The examiner takes Official Notice that rounded surfaces are old and well known in fishing tackle storage devices.

12. Claims 1, 4-6, 16, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolniak in view of Thibodeaux.

The patent to Wolniak shows an ice fishing storage device for fishing tackle as discussed above. Wolniak does not show the elongate shells having an adjustable length, but does show tubes of different lengths. Thibodeaux shows adjustable length tubes 12-14. In reference to claims 1, 16, 43, it would have been obvious to provide Wolniak with at least one adjustable length tube as shown by Thibodeaux for the purpose of storing fishing tackle of different lengths in one elongate shell. Thibodeaux shows a bucket 1, but does not disclose that the capacity is at least

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about three gallons. However, it would have been obvious to make the capacity at least about three gallons or whatever size is desired to best suit the purpose of the user. Routine experimentation would be used to determine the optimum size of the bucket. See *In re Jones* 162, USPQ 224. In reference to claims 4, 5, Wolniak shows a top wall 26 with apertures 22 which also can be considered sockets.

13. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over McEwen.

The patent to McEwen shows a fishing pole holder and storage container that functions as an ice fishing storage apparatus as discussed above. In reference to claim 20, McEwen does not disclose positioning the ice fishing storage apparatus in a container. However, it would have been obvious to store the elongate shells and the spacing structure in the container when not in use for the purpose of minimizing storage space.

14. Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolniak.

The patent to Wolniak shows a fishing tackle storage system as discussed above. In reference to claim 35, it is not clear if Wolniak can store an entire ice fishing tip-up within the chamber, but it would have been obvious to size the chamber to store whatever type and size of fishing tackle desired such as a tip-up so the tip-up can be transported safely to the fishing location. In reference to claim 36, Wolniak does not show a rounded surface on the proximal end of the elongate shell, but it would have been obvious to employ a rounded surface for the purpose of easier insertion of the tackle into the shell. As stated above, the examiner takes Official Notice that rounded surfaces are old and well known on fishing tackle storage devices.

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15. Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over McEwen as applied to claims 19 and 23 above, and further in view of Wolniak.

The patents to McEwen and Wolniak show fishing tackle storage devices and have been discussed above. In reference to claims 40 and 42, it would have been obvious to provide McEwen with a template as shown by Wolniak for the purpose of storing fishing tackle in the container.

Response to Arguments

3. Applicant's arguments filed Nov 25, 2002 have been fully considered but they are not persuasive. Applicant argues that elements 12, 13, 14 of Thibodeaux do not constitute an elongate shell, but clearly from viewing Fig. 4 that is exactly what they are and since they hold a fishing rod, they are capable of holding ice fishing tackle. Since the rod holders are at opposite ends of the tackle box they can be considered to be adjacent since the term is relative and the claim does not define precisely what is considered as "adjacent". In other words, the rod holders are adjacent compared the other end of the boat. A tube is defined as a hollow cylinder and by viewing Fig. 4 of Thibodeaux, that is exactly what is shown. Clearly a tube can have a bottom such as a "test tube". If Thibodeaux does not show a plurality of apertures in the top surface of the tackle box, how can the tube members 12 extend below the top surface? The plural members 12 shown nested together can be considered as a male and female elongate tubes. Also, in reference to claim 24, the elongate cavity portions of each adjacent shell component are in

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communication with each other since they are nested. As to Wolniak, applicant argues that the tubes 30 are not long enough to store the tip portion of an ice fishing rod extending to the reel or line windup. However, applicant has not defined this distance and the tubes of Wolniak show the structure to perform the function and are certainly long enough to store a short ice fishing rod. Applicant has submitted no evidence that Wolniak will not store part of a fishing rod. The holes 23 of Wolniak can be considered to be frictionally joined to the tubes noting Fig. 2 which shows the tubes extending to the bottom wall of the tackle box which is where the holes are located. From Fig. 2, the tubes cover the holes and thus can be considered as sockets. Also, panel 21 has an aperture which the tubes 30 extend through and hence can be considered as a socket. Wolniak shows the panel 21 with apertures for the tubes 30 to be in contact with the walls, such as end wall 12, of the container. Hence Wolniak discloses every claimed feature in claims 14 -15. In regard to claim 30, the claim does not require that the top of the tackle box is open or shut when the rods are placed in the tubes. Hence the rods can be stored in the tackle box while open to rig tackle in order to prevent the rods from being placed on the ice. As to storing ice fishing rods in the tackle box, Wolniak shows structure to perform the intended use. Wolniak shows a chamber between panels 21, 21. Wolniak can be considered to have a closed bottom end since it has a bottom wall 13. The bottom end of the elongate shells is flush with the surface of the first spacing component 21 on the bottom of the tackle box.

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Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

16.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Kurt Rowan". The signature is written in a cursive, flowing style.

KURT ROWAN

PRIMARY EXAMINER

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March 24, 2003